

1 part, upon your own experience as a bicyclist stating
2 "when riding a bicycle myself I would always seek out
3 a smooth area to ride. Avoiding any rough terrain
4 and/or uneven ground was important. In my opinion any
5 cyclist, young or older, riding along a street would
6 completely avoid any contact with so-called rumble
7 strips".

8 A That's my opinion.

9 Q Based on riding a bicycle yourself?

10 A Now, let's get --

11 Q Answer my question, first. Based on
12 riding --

13 A I have to qualify that, because you are
14 putting words in my mouth that --

15 Q I was quoting your report.

16 A All right. When I rode a bicycle, it was a
17 long time ago, I always sought out the smoothest
18 place. And that was when I was riding a bicycle. If
19 I would ride a bicycle today, I would seek out a nice
20 smooth area. I wouldn't run down a rocky road. That
21 would be totally ignorant to do something like that to
22 abuse your body like that, let alone the bicycle.

23 Q Have you ever seen young people riding
24 bicycles today where they intentionally try to hit
25 bumps and jumps?

1 A Totally different thing. I've seen -- yes,
2 I've seen that.

3 Q So some people apparently like to hit bumps
4 or ride their bicycle in that fashion?

5 A Before you was talking about kids. Now you
6 are talking about people. So it's two different
7 things. People don't do that.

8 Q Have you ever seen any kids do that?

9 A Yes.

10 Q And Robin Nixon was a kid, was he not?

11 A He wasn't jumping up and down on bicycles
12 like you are categorizing.

13 Q No, but he was a kid.

14 A He was 12 years old.

15 Q Do you have any information, Mr. Westphal,
16 as to where on that eastbound train Robin Nixon
17 grabbed on on the day of his accident?

18 A No, it was a railroad coal car.

19 Q But you don't know where the coal car was
20 positioned in the course of that train?

21 A No.

22 Q Train was a mile and a half long; correct?

23 A That's correct.

24 Q So it's possible Mr. Nixon, as far as you
25 know, grabbed onto that train a mile or so behind the

1 head end where the train crew was operating?

2 A I don't know that.

3 Q You don't know one way or the other?

4 A No, neither did the train crew.

5 MR. TAFT: Take a few minutes. Take a
6 short break.

7 (Break taken.)

8 MR. TAFT: Thank you, Mr. Westphal. Those
9 are all the questions I have.

10 THE DEPONENT: Thank you.

11 MR. SOLYMOSI: Roger, I just would like to
12 ask him a couple questions.

13 EXAMINATION

14 BY MR. SOLYMOSI:

15 Q One to clarify, Mr. Westphal, Roger had
16 asked you about exhibits to deposition transcripts?

17 A Yes.

18 Q And they had not been sent to you attached
19 to the deposition transcripts. During the break, were
20 you able to review your reference and determine
21 whether or not, in fact, you did get most of the
22 exhibits that were attached, the documents that were
23 attached as exhibits to the transcripts?

24 A Yes, they were submitted not as deposition
25 exhibits, but I had them in the submission from the

1 defendant in Interrogatories, that material.

2 Q So just to be clear, any of the documents
3 that Mr. Taft provided to me in Answers to
4 Interrogatories and request for production of
5 documents, those exhibits you did have?

6 A Yes.

7 Q Those exhibits did not include this one
8 exhibit from Mr. Glenn's deposition that he actually
9 hand wrote and created at his deposition?

10 A No, I had never seen that.

11 Q Okay. With regard to grade crossing
12 equipment, would grade crossing equipment that was
13 installed along the West 19th Street tracks, would
14 that have been on City property?

15 A Oh, yes, that would have been on City
16 property.

17 Q Is it uncommon for cities to allow
18 railroads to install equipment on their property?

19 MR. TAFT: Object to form, leading.

20 THE DEPONENT: No, it's not uncommon for
21 them to install grade crossings at the crossing.

22 MR. SOLYMOSI: That's all I have.

23 MR. TAFT: I have nothing further.

24 COURT REPORTER: Do you want to read?

25 THE DEPONENT: We will read.

1 (THEREUPON, at 2:30 o'clock p.m., the
2 deposition was concluded.)
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SIGNATURE PAGE

August W. Westphal
AUGUST W. WESTPHAL

Subscribed and sworn to before me this

4 of JUNE 2007, 2007.

Richard Morales
Notary Public



RICHARD
MORALES
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga Cty.
My Comm. Exp. 4/17/08
4-14-12

dle

Errata Sheet

Deposition Of:

Date:

Page #	Line #	Correction:	Reason For Correction:
17	1	Weigh to Way	Spelling
21	16	Now to NATURE	wrong word
26	24	97 to 87	wrong year
32	5	back to by	wrong word
38	8	Regisler to Esterville	wrong word
39	9	City - Strike it	wrong word
39	10	at to with	wrong word
39	19	in to since	wrong word.
49	16	Sant to Santa	wrong word.
58	12	Strike "he will"	extra words
72	20	Strike "I Mark Report"	— not valid
74	21	Engn to Cendera	wrong word.
90	24	them to the	wrong word
93	17	a - to are	wrong word
93	18	ar to around	wrong word
95	2	of to or	wrong word
96	9	weigh to Way	wrong word
129	23	of to or	wrong word
132	21	blocked to block	wrong word

1 C-E-R-T-I-F-I-C-A-T-E

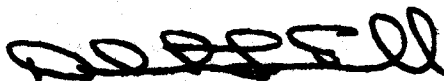
2 COMMONWEALTH OF PENNSYLVANIA,)
3) SS:
4 COUNTY OF ALLEGHENY:)

5 I, Deborah L. Endler, do hereby certify that
6 before me, a Notary Public in and for the Commonwealth
7 aforesaid, personally appeared AUGUST W. WESTPHAL, who
8 then was by me first duly cautioned and sworn to
9 testify the truth, the whole truth, and nothing but
10 the truth in the taking of his oral deposition in the
11 cause aforesaid; that the testimony then given by him
12 as above set forth was by me reduced to stenotypy in
13 the presence of said witness, and afterwards
14 transcribed by means of computer-aided transcription.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,
19 counsel or attorney of either party, or otherwise
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Pittsburgh,
23 Pennsylvania, on this 30th day of
24 May, 2007.

25 

Deborah L. Endler, Notary Public
In and for the Commonwealth of Pennsylvania
My commission expires November 2, 2008

1	EXHIBIT INDEX		
2			MARKED
3	WESTPHAL DEPOSITION		
4	1	Notice of Deposition	5
5	2	Curriculum Vitae	7
6	3	List of cases	12
7	4	Invoice	13
8	5	Invoice	13
9	6	Mr. Westphal's Export Report 2/16/2007	44
10	7	Mr. Westphal's Amendment to Export Report 2/16/2007	45
11	8	List of cases	46
12	9	Wheel Report	65
13	10	Mr. Guarino's Expert Report 2/12/2007	94
14	11	Diagram	130
15			
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Tab B
Westphal Deposition Ex. 1 -
Notice of Deposition (A. Westphal)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,
Plaintiff

v.

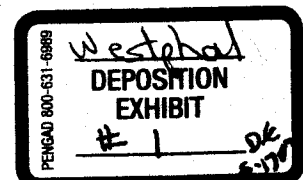
NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,
Defendants

CIVIL ACTION NO. 05-101 ERIE

NOTICE OF DEPOSITION (A. WESTPHAL)

TO: Tibor R. Solymosi, Esq.
Segel & Solymosi
818 State Street
Erie, PA 16501
Attorney for Plaintiff Robin Nixon

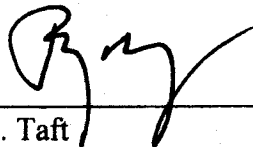
PLEASE TAKE NOTICE that the deposition upon oral examination of August W. Westphal, Transit Operations & Personnel Guidance of Ohio, Inc., P.O. Box 39146, North Ridgeville, Ohio 44039, one of the expert witnesses disclosed by plaintiff Robin Nixon, will be taken by stenographic means, pursuant to Rule 30 of the Federal Rules of Civil Procedure, on Thursday, May 17, 2007, commencing at 9:30 a.m., at the Offices of MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507, before Morse, Gantverg & Hodge, Inc., Court Reporters, or some other person duly authorized to administer the oath.



The deponent, August W. Westphal, is directed to bring the following documents and things to his deposition:

- (1) the most current Curriculum Vitae for August W. Westphal;
- (2) Mr. Westphal's complete expert witness file with respect to the April 27, 1997 accident including, but not limited to, his two expert reports dated February 16, 2007, and all drafts thereof, and any and all documents and things upon which Mr. Westphal relied in arriving at his opinions and/or in preparing his expert witness reports;
- (3) any and all documents and things upon which Mr. Westphal relied in arriving at his opinions and/or in preparing his expert reports, if not contained in his expert witness file;
- (4) any and all expert reports prepared by Mr. Westphal and any and all transcripts of depositions of Mr. Westphal with respect to the lawsuits identified in his disclosure letter dated February 16, 2007; and
- (5) records of all billings and payments with respect to Mr. Westphal's expert witness services including all time records for such services.

Respectfully submitted,



Roger H. Taft
PA 19983/NY 2876456
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7603
(814) 454-4647 (facsimile)
rtaft@mijb.com

Attorneys for Defendants
Norfolk Southern Corporation and Norfolk
Southern Railway Company, Inc.

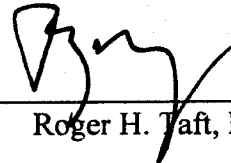
Dated: April 10, 2007

cc: Morse, Gantverg & Hodge, Inc., Court Reporters

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition (A. Westphal) was served upon the following attorney of record for plaintiff Robin Nixon, via First-Class United States Mail addressed as follows, this 10th day of April, 2007:

Tibor R. Solymosi, Esq.
Segel & Solymosi
818 State Street
Erie, PA 16501

A handwritten signature in black ink, appearing to read "R. Taft", is written over a horizontal line.

Roger H. Taft, Esq.

Tab C
Westphal Deposition Ex. 2 -
A. Westphal Resume

**TRANSIT OPERATIONS AND PERSONNEL
GUIDANCE OF OHIO, INC.**

August W. Westphal, President
35239 Greenwich Avenue
Post Office Box 39146
North Ridgeville, OH 44039
Telephone (440) 327 - 7125
Cell (440) 452 - 8427
Fax (440) 327 - 7125
E-Mail whiteywestphal1@aol.com -- whiteywestphal1@alltel.net

OBJECTIVE: Railroad Operations Consultant, Grade Crossing Accidents.
Passenger, Freight, Yard and Industrial Operations.

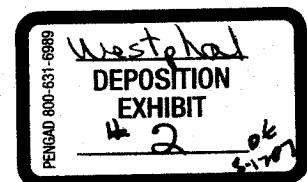
EXPERIENCE: Train Operations, Freight and Passenger
Brakeman/Yardman and Conductor/Foreman
State Railway Commission - Public Service Commission
Interstate Commerce Commission (ICC)
Federal Railroad Administration (FRA)
National Transportation Safety Board (NTSB)
Operation Lifesaver (1981 - 1986)
Locomotive Cab Control Committee (1981 - 1986)

EDUCATION: Graduate, Fremont NE High School

BACKGROUND: May 1945 - December 1960 Employed by Chicago and North Western
Railway Company.
Trainman/Brakeman - Yardman/Switchman - Freight Service
Conductor/Foreman - Freight Service
Passenger Service Conductor - Passenger Service Brakeman/Baggage
man
Seniority continuous without dismissal under any circumstance.

December 1960 - May 1965: Nebraska State Representative working
with and appearing before State and Federal Agencies concerning
safety inspections and clearance on railroads.

June 1965 -- February 1981: Director BRT/UTU Legislative
Department Cleveland, OH. Responsible for coordinating Railroad
Safety Responsibilities and Railroad Safety Activities in the U. S. A.
and Canada.



Page No. Two

BASCKGROUND: March 1981 – September 1986 Director Legislative Research UTU, Washington, D. C. Review legislation introduced in the Congress involving Railroad Operations, etc. Assist in the preparation of testimony before the House and Senate Committees involving Railroad Safety.
Handle all alleged violations of Federal Safety Statutes, Rules and Regulations involving Railroad Safety.

Represented the United Transportation Union before:

**Federal Railroad Administration (FRA)
National Transportation Safety Board (NTSB)
Transportation Safety Research Board (TSRB)
Interstate Commerce Commission (ICC)**

**STUDIES AND
COMITTEES:**

**International Transportation Conference, University of Chicago,
1966, 1967, and 1968.**

UTU Representative, Locomotive Cab Control Committee.

UTU Representative, Grade Crossing Protection Committee.

UTU Representative, Operation Lifesaver.

QUALIFIED IN TRIAL EXPERIENCE, BOTH STATE AND FEDERAL COURTS.

EXPERT REVIEW OF DEPOSITIONS.

**MEMBER, NATIONAL ASSOCIATION OF RAILROAD SAFETY CONSULTANTS
AND INVESTIGATORS. (NARSCI)**

MEMBGER, ADVISORY BOARD NARSCI

Additional Information at: www.NARSCL.com

Revised: January 2006

Tab D
Westphal Deposition Ex. 3 - A. Westphal
Published Articles and List of Deposition
and Trial Testimony (1997-2007)

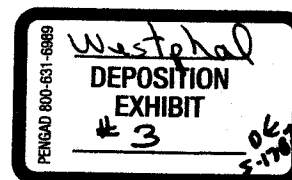
Published Articles:

RAILROAD TRAIN CREWS – INCREASED RESPONSIBILITIES

FELA Reporter and Railroad Liability Monitor
Vol. 12, No. 11 November 1999

Cases wherein August W. Westphal was deposed of testified in trial since 1997:

Stubbs v. Southern Pacific Railroad Circuit Court, City of St. Louis, MO.	Deposed and Trial Testimony For Plaintiff
Simmons v. CSX Transportation General Court of Justice	Deposed and Trial Testimony For Plaintiff
Rose v. Norfolk Southern Railroad Bluefield WV Court	Deposed For Plaintiff
Lambert v. CSX Transportation Court of Common Pleas	Deposed For Plaintiff
Dixon v. CSX Transportation Circuit Court, 13 th Judicial District	Deposed For Plaintiff
Heck v. Southern Pacific Railroad Superior Court of Calif., City of LA	Deposed and Trial Testimony For Plaintiff
Bruce J. Bartley v. CSX Transportation Superior Court, Vanderburgh Cty IN	Deposed For Plaintiff
Gregg O. All v. Norfolk Southern Railroad Charleston, S.C. Court	Deposed For Plaintiff
Beyerle v. Soo Line Railroad U. S. District Court, Southern Dist IL	Deposed For Plaintiff



Page No. Two

Jones v. Illinois Central Railroad Illinois State Court	Deposed For Plaintiff
Merollo v. Metra Railroad Circuit Court, Cook Cty, Illinois	Deposed For Plaintiff
Rymanowicz v. Norfolk Southern RR Monroe Cty Circuit Court	Deposed and Trial Testimony For Plaintiff
Springston v. Conrail U. S. District Court, East District, OH	Deposed and Trial Testimony For Plaintiff
Cermak v. D. M. V. W. Railroad Montana State Court	Deposed For Plaintiff
Dillon v. Norfolk Southern Railroad U. S. District Court, Northern Dist. IN	Deposed For Plaintiff
Christmas v. Alabama Great Southern RR U. S. Dist. Court, Eastern Dist LA	Deposed For Plaintiff
Cork v. Illinois Central Railroad U. S. Dist. Court, Middle Dist LA	Deposed For Plaintiff
Conner v. Union Pacific Railroad Third Judicial Dist. S. L. C., UT	Deposed For Plaintiff
Clark v. Cavanaugh, et al Circuit Court of Jefferson Cty, AL	Deposed For Plaintiff
Lindquist v. C. & N. W. Railroad Circuit Court 19 th Jud. Dist, IL	Deposed For Plaintiff

Page No. Three

Stark v. Kansas Southwestern Railroad Sedgewick Cty Court, Kansas	Deposed and Trial Testimony For Plaintiff
Stone v. AMTRAK Charleston, WV Court	Deposed For Plaintiff
Andrew Frank v. E. J. & E. Railroad Hammond, IN Court	Deposed For Plaintiff
Pamela Dawn Givens v. NS Railroad Circuit Court of St. Louis, MO.	Deposed For Plaintiff
Hoang v. CSX Transportation U. S. District Court, So. MS	Deposed For Plaintiff
Humphrey v. Union Pacific Railroad District Court of Douglas Cty, NE	Deposed For Plaintiff
Miotti v. Union Pacific Railroad and Chicago Hgts Steel Company	Deposed and Trial Testimony For Plaintiff
Van Overen v. I. & M. Railroad Iowa District Court, Clay County	Deposed For Plaintiff
Bach v. Soo Line Railroad Minnesota – County of Anoka	Testified at Trial
Majors v. CSX Transportation, Inc. U.S. District Court for Maryland	Deposed (video) Plaintiff

Tab E
Westphal Deposition Ex. 4 - A. Westphal
Invoice for Services (2/23/07)

P.O. Box 39146
North Ridgeville, Ohio 44039
(440) 327-7125 • FAX (440) 327-0362
e-mail: whiteywestphal1@aol.com

A. W. WESTPHAL
President

February 23, 2007

Mr. Tibor R. Solymosi, Esquire
818 State Street
Erie, PA - 16501

Re: **Robin Nixon vs. Norfolk Southern Corp.**

Dear Mr. Solymosi:

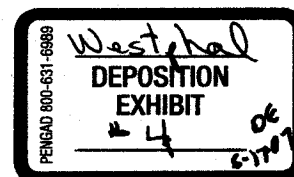
We are herewith providing our statement for service performed in the above captioned matter to and including the end of the month of February, 2007. It is our practice to bill each client for the work performed each month. This in lieu of requesting a large retainer fee. The service billed is as follows:

Review & Research Deposition Testimony of Timothy J. Price, Engineer ---	1.0	hour
Review & Research Deposition Testimony of Robert B. Glenn, Conductor --	2.0	"
Review & Research Deposition Testimony of David C. Morgan, Trainmaster -	1.5	"
Review & Research Deposition Testimony of Robert E. Rockey, Clerk - - - -	.5	"
Review & Research Deposition Testimony of Steve W. Frye, Claim Agent - - -	2.0	"
Review & Research Deposition Testimony of James F. Baskin, M. of Way ---	1.0	"
Review & Research Deposition Testimony of Donald R. Cunningham, Laborer	1.0	"
Review & Research Deposition Testimony of Harvey H. Stone. Consultant - -	2.5	"
Review & Research Deposition Testimony of M. Eugene Pandlis, Clms. Lit. - -	2.0	"
Answers and Objections to Interrogatories to Defendant Second Set - - - - -	1.0	"
FHA Synthesis of Shoulder Rumble Strips and Policies - - - - -	1.0	"
Norfolk Southern Six Point Action Plan - - - - -	.5	"
Norfolk Southern General Conduct Rules , May 1, 1965 - - - - -	1.0	"
Norfolk Southern Operating Rules - - - - -	1.5	"
Finalizing and Preparation of Report February 16, 2007 - - - - -	4.0	"
Total Hours billed - - - - -	22.5	hours

Twenty Two and One Half hours at \$125.00 per hour - - \$2,750.00

Prepare your check in favor of: "T. O. P. of Ohio, Inc."

TIN 34 - 1549595



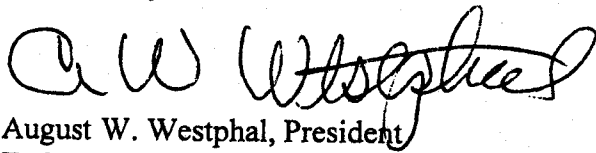
Mr. Tibor R. Solymosi, Esquire
Nixon vs. Norfolk Southern Corp.
February 23, 2007
Page two, contd

Per our Fee Agreement payment of each billing is expected upon receipt.

We look forward to our continuing relationship in this matter to a successful conclusion.

With kindest regards, I remain,

Respectfully,

A handwritten signature in dark ink, appearing to read "August W. Westphal". The signature is fluid and cursive, with the first name "August" being the most prominent part.

August W. Westphal, President
T. O. P. of Ohio, Inc.

cc: file

Tab F

**Westphal Deposition Ex. 5 - A. Westphal
Invoice for Services (4/25/06)**

Transit Operations & Personnel Guidance of Ohio, Inc.

P.O. Box 39146

North Ridgeville, Ohio 44039

(440) 327-7125 • FAX (440) 327-0362

e-mail: whiteywestphal1@aol.com

A. W. WESTPHAL
President

April 25, 2006

Mr. Tibor R. Solymosi, Esquire
SEGAL & SOLYMOSI
Attorneys at Law
818 State Street
Erie, PA 16501

Re: **Robin Nixon vs. Norfolk Southern Corp.**

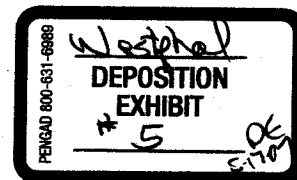
Dear Mr. Solymosi:

We are herewith submitting for payment our statement for services rendered in the captioned matter to the end of April, 2006. The items of time billed are listed as follows:

1. Complaint and carriers answers thereto - - - - -	1.0 hours
2. Deposition testimony of Robin Nixon - - - - -	3.0 "
3. Dennis Lagan & Associates REPORT OF INVESTIGATION - -	1.5 "
4. Answers and Objections by carrier Norfolk Southern - - - - -	1.0 "
5. Reports, photos, Pulse Report, time tables and articles - - - - -	1.0 "
6. City of Erie Police Department records and reported facts - - - - -	0.5 "
7. Photos in 1997 and current dates - accident site - - - - -	1.0 "
8. Format and prepare questions - - - - -	2.0 "
Total hours billed - - - - 11.0 hours	

Eleven (11) hours billable time at \$125.00 per hour - - - - - \$1,375.00

Prepare your check in favor of: "T. O. P. of Ohio, Inc."
TIN: 34-1549595

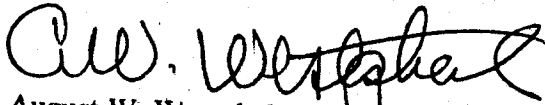


Mr. Tibor R. Solymosi, Esquire
Nixon vs. Norfolk Southern Corp.
April 25, 2006
Page two, contd

As per our Fee Agreement we do not require a large retainer but do request that bills be paid promptly on receipt..

We look forward to serving your firm in this matter as it develops.

Respectfully,

A handwritten signature in dark ink, appearing to read "A.W. Westphal", with a stylized flourish at the end.

August W. Westphal, President
T. O. P. of Ohio, Inc.

cc: file

Tab G

**Westphal Deposition Ex. 6 - A. Westphal
Expert Report (2/16/07)**

P.O. Box 39146
North Ridgeville, Ohio 44039
(440) 327-7125 • FAX (440) 327-0362
e-mail: whiteywestphal1@aol.com

A. W. WESTPHAL
President

February 16, 2007

Mr. Tibor Solymosi, Esquire
SEGAL & SOLYMOSI
Attorneys at Law
818 State Street
Erie, Pennsylvania 16501

Re: **Robin Nixon vs. Norfolk Southern Corp.**

Dear Mr. Solymosi:

BACKGROUND AND EXPERIENCE

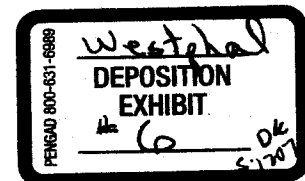
I, August W. Westphal, am a railroad safety expert. I have considerable experience (fifty-four years) in the railroad industry. I have performed service as both Freight and Passenger Conductor/brakeman – Foreman/Switchman both in over the road and Yard/Terminal Operations. Also, I have worked jointly with the representatives of the American Association of Railroads (AAR), Federal Railroad Administration (FRA), National Transportation Safety Board (NTSB), and Rail Labor Organizations (BLE, B of MWE, BRC and UTU) in handling safety activities on the nation's railroads. As a consultant I have participated in 14 cases involving children in railroad accidents. In one of them it involved a child with a bicycle.

ENGAGEMENT

I was first contacted in this matter by Mr. Tibor Solymosi, Esquire on March 27, 2006 via telephone. This expert was requested to review the facts underlying the incident that occurred on April 27, 1997, conduct any necessary investigation and render opinions regarding the conduct of Norfolk Southern Corporation and its personnel.

DOCUMENTS

1. Complaint
2. Answers
3. Deposition Testimony of Robin Nixon, Plaintiff



Mr. Tibor Solymosi, Esquire
Nixon vs. Norfolk Southern
February 16, 2007
Page two contd

4. Report of Investigation, Dennis Lagan & Associates
 5. Defendants Answers to Interrogatories
 6. Documents from Defendant Norfolk Southern re: Accident
 7. Police Report, Erie PA Police Department
 8. Photos, West 19th Street, September 2002
 9. Erie, PA Police photos of Accident scene
 10. Photos – West 19th Street, March 2006
 11. Deposition Testimony of David C. Morgan, NS Trainmaster
 12. Deposition Testimony of Timothy J. Price, NS Engineer of train
 13. Deposition Testimony of Eugene Pandlis, Manager Claims Litigation
 14. Deposition Testimony of James F. Baskin, NS Supervisor of Track
 15. Deposition Testimony of Steve W. Frye, NS Claim Agent
 16. Deposition Testimony of Robert B. Glenn, Conductor of train
 17. Defendant NS Answers to Interrogatories –Second Set
 18. Norfolk Southern Railroad Safety and General Conduct Rules
 19. Norfolk Southern Operating Rules Effective July 2, 1995
 20. Deposition Testimony of Donald R. Cunningham, NS Laborer
 21. Deposition Testimony of Robert E. Rockey, NS Route Clerk and Crossing Watchman
 22. Deposition Testimony of Harvey H. Stone, President, Stone Consulting and Design Inc.
-

Mr. Tibor Solymosi, Esquire
Nixon vs. Norfolk Southern
February 16, 2007
Page three, contd

23. Federal Highway Administration, Technical Advisory, Roadway Shoulder Rumble Strips
24. Federal Highway Administration, Synthesis of Shoulder Rumble Strip Practices and Policies
25. Norfolk Southern Six Point Action Plan for Safety of Operations
26. Expert Opinion of Guarino Enterprises, Rumble Strips near tracks

FACTS

The train involved in the instant accident April 27, 1997 was a thru Train operating in an eastbound direction between Conneaut, OH and Buffalo, NY. The lead Unit of the three Unit power consist was NS 8669 followed by NS 6620 and Trailing Unit NS 8594 the train is identified as a Unit Coal Train No. Y47L1. The train consist was 150 loads and 00 empties with 7,225 tons traveling at a reported eight (8) miles per hour. The speed of travel is suspect in that the Engineer had advised the police the train was traveling at 15 MPH at the time of the accident to Robin Nixon.

The Norfolk Southern Train was operated with only a two (2) man crew, the Conductor and the Engineer. The Conductor was Robert B. Glenn who began his career in May of 1995 in Conneaut, OH. (Glenn P 7 L- 2) Strange as it may seem Mr. Glenn started his career as a Conductor with just on job training to qualify. Mr. Glenn worked with several Conductors and there was no certification as to his being qualified. (Glenn P8 L 6-10) This is very unusual in that generally speaking an employee in train service must have at least three (3) years experience as a brakeman/switchman prior to being eligible to qualify as a conductor. Extensive training and rule certification is required. The engineer was Timothy J. Price who began his career on the railroad in 1988 served in the capacity of brakeman/conductor until 1990 when he attended engineer schooling at McDonough, GA. (Price P -7 L 22-24)

Truly the actual experience and responsibility for operating a railroad train of 150 cars was lacking. Neither employee on the train seemed to be fully aware of their duties. Conductor Glenn indicated in response to a question as to who was in charge of the train, (Glenn P17 L 24-25) that it was a shared responsibility. While messages are generally addressed "C & E", the Conductor is the employee in charge of the train. The conductor is to be seated in the lead unit of the train, on a two man crew, and be vigilant and alert to what is on the left side of the train moving along the track. Conductor Glenn was not alert and vigilant when he said he observed nothing between State and Cranberry Street

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(Glenn P18 L 11-16) also, was not familiar with the area along the track where children may be sited inasmuch as he stated it was not part of his responsibility. (Glenn P 19 L 3-8) Mr. Glenn indicated his training was ongoing and was specific to the "operation and handling of equipment that we're on" (Glenn P 20 L 7-21) Conductor Glenn further indicated if children were not on the right-of-way and not inhibiting anything to do with our operation, then we were not trained to watch for children. (Glenn P 20 L-22-25 and P 21 L 1-5) Engineer Price was also limited in his knowledge of train operation. Critical to the operation of a train are many characteristics of the territory over which the train will be operated. Direction, terrain, grade, sidings and switch or yard locations and the area surrounding same are critical for a safe and efficient operation of a train. Engineer Price indicated his only concerns were the rail the grade and signals. (Price P8 L 17-19) It is strange to this expert engineer Price indicated he had no policy or training from the carrier NS insofar as watching for children who are repeatedly in the area of the track. (Price P 19 L 1-8) Neither Conductor Glenn or Engineer Price were familiar with or having knowledge of the Norfolk Southern Six Tenets of Safety. While Engineer Price was aware of one (1) speedometer Conductor Glenn was of the opinion there were two (2) speedometers in the locomotive unit. Neither Engineer Price or Conductor Glenn was aware of a children's playground in close proximity to the railroad tracks on west 19th Street in Erie, PA.

DISCUSSION

Generally speaking the first indication of safety in all Railroad Operating Rules is "Safety is of the first importance in the discharge of duty" This mandate is very important to the train crew and all other employees on the railroad. Norfolk Southern Operating Rules **GR-9(a)** requires members of the crew must observe the condition of their train and inspect it at frequent intervals while it is moving. When practical, they will look back at the track frequently to see if damaged by dragging equipment and also at block signals and roadway structures to see if they have been struck by objects protruding from their train. Looking back and watching their train is a very important part of the crew duties. This is especially true since the crew members are all located on the power units of the train.

Observing the passing train is also the important responsibility of the employees who are adjacent to the train operation. In the instant accident to Robin Nixon there were Norfolk Southern Employees in advantageous positions to note the presence of children along the area of West 19th Street in Erie, PA. The use of Crossing Watchmen was in place at three locations along west 19th street and one in particular in the vicinity of the accident to

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Robin Nixon. The Crossing Watchmen were under the direct charge of James F. Baskin (Taft Answers to Interrogatories Second Set P-4)

It is unfortunate and significant that many of the employees who were in a position to note children in an area of danger next to moving freight cars were admittedly void of any required duty insofar as noting children in an area occupied by train traffic. Mr. Donald E. Cunningham was employed as a Crossing Watchman from 1971 to 1983 and following that date was a relief person for Crossing Watchmen who were on vacation or absent for a period of time. Mr. Cunningham indicates he had seen Children in the area and playing on the sidewalk. (Cunningham P 12 L 24-2) Contrary to looking for children Mr. Cunningham was taught to watch trains – that was our job. (Cunningham P13 L 23-1) To Mr. Cunningham's knowledge there were no Supervisors who ever talked to the Crossing Watchmen about children getting near the tracks and train operations. (Cunningham P14 L 22-2) In the number of years Mr. Cunningham worked as a Crossing Watchman he never paid any attention to children close to the tracks. The only reason his not being concerned being his keeping an eye on the trains. (Cunningham P14 L 3-9) The three crossings where Watchmen were employed were Cherry Street, Cascade Street and Cranberry Street (Cunningham P 15 L 12-14) the reason for the Watchmen was due to there being schools near the crossings. (Cunningham P 15 L 15-17) Mr. Cunningham was totally unaware of the Norfolk Southern Six Tenets of Safety. (Cunningham P17 L 3-8) On a different view of the responsibilities of the crossing watchman, Mr. Robert E. Rockey employed December 1, 1969 as a Route Clerk. (Rockey P 4 L 9) Mr. Rockey was employed as Extra Crossing Watchman for the period years '83, '84, '85 and '86 and in '93 came back to crossing watchman. (Rockey P 7 L 9-18) A PUC Order required a crossing watchman if so many students were to cross the tracks. (Rockey P 8 L 9-12) Our responsibility was to get the kids across the tracks and see that no one was injured. (Rockey P 8 L 17-21) In the year 2000 the tracks along West 19th Street were removed due to a change in operations to Conrail trackage. (Rockey P 9 L 20-24) While Mr. Rockey was working they would have safety training sessions. (Rockey P 13 L 3-4) The training was more of a Hazardous Materials (HAZ MAT) training session. If one would see a car with the HAZ MAT marking and you would see it leaking you would let the police or railroad know about it quickly (Rockey P13 L 6-16) Training was limited and very simple. The Watchman would watch another do his job and then catch on quickly. A basic thing. (Rockey P 14 L 1-17) There were no written instructions for the position of Crossing Watchman other than a notice in the shanty years ago. Do not know what happened to them (Rockey P 15 L 25-5 and L 8-10) Mr. Rockey had seen on a couple of occasions kids on bicycles being towed by the train. (P 17 L 1-6) In one instance Mr. Rockey pulled a kid away from the train and yelled at another and he stayed away. (Rockey P 17 L 7-10) There were no Supervisors present to report the incident to. One

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could only attempt to get a name and make a record of it in the event a Supervisor inquired. (Rockey P 17 L 14-22) Recalls that Supervisors may have come to the area and indicated what they should do in attempting to be aware of children near the tracks or trains running thereon. (Rockey P 18 L 4-16) Mr. James L. Baskins who was in charge of the Crossing Watchmen began his career with N&W Railroad a predecessor to Norfolk Southern. Mr. Baskins was a Terminal Supervisor for maintenance of way (Track) and was based in Conneaut, OH. Mr. Baskins personally inspected the track along west 19th Street on a weekly basis. (Baskins P 11 L 1-4) He clearly understood the job activity of the crossing watchmen in Erie, PA. (Baskins P 13 L 15-19) The inspections were made from a High Rail Vehicle which would give him a general look at the trackage and the area surrounding the track. (Baskins P 15 L 8-9) Mr. Baskins was of the opinion the training of the crossing watchmen was only "on-job-training". To his knowledge there were no written instructions. (Baskins P 17 L 9-13) The only training per se was at Conneaut, OH held by the Trainmaster and involved union employees. (Baskins P 19 L 7-19) In Mr. Baskins opinion there was not any concern by N&W or NS for the safety of children who may be near trains of the carrier. (Baskins P 22 L 11-16) Mr. Baskins could not recall any signage in the area to alert children of any danger. (Baskins P 22 L 17-20)

In the review of Depositions and/or statements from Norfolk Southern Railroad Officers employees it is strange and significant they were totally unaware of the Playground area along the tracks which would be occupied by children. On the other hand, each Officer and/or employee of the carrier was familiar with the Cemetery located in the area.

The investigation report filed in this matter reflects numerous witnesses from the populated area who were contacted and they reflected upon the serious situation of children playing in the area of train tracks. The numerous incidents reported would indicate there was a serious problem in the area of West 19th Street. It is unconscionable for the railroad to say they had no notice of children playing in the area. Train Crews and Officials of the carrier are charged with the responsibility of reporting such sightings to the train dispatcher and him, to the police of the city. There is no question the railroad knew or should have known of this serious and dangerous problem.

WHAT SHOULD HAVE BEEN DONE

Shoulder Rumble Strips (SRS) have been widely tested in many states to reduce accidents and alert drivers of the edge of the roadway. The Federal Highway Administration has assembled data of this nature which includes the testing of bicyclists who travel on highways, etc. In 2000 the Pennsylvania Transportation Institute relied upon the project by Elefteriadou et al. to develop new SRS configurations that decrease the level of vibration experienced by bicyclists while providing an adequate amount of

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stimulus to alert inattentive or drowsy drivers. Six configurations were tested by 25 intermediate and advanced bicyclists. The researchers recommended the adoption of two new bicycle-tolerable rumble patterns, one for the non-freeway facilities operating near 88 kph (55 mph) and the other for those operating 72 kph (45 mph)

Mr. James A. Guarino of Guarino Enterprises has prepared a report on the cost, application and duration of installing striping, warning signs and rumble strips of a nature similar to and as outlined in the study above referred to. The plan submitted would allow the rumble strips to be placed along the 1.2 miles of track on West 19th Street from Peach Street to Raspberry Street. In my opinion the installation of rumble strips would have prevented children from riding bicycles along the side of the train and avoid injury as was sustained by Mr. Nixon. Also the installation of yellow strips along with signs between the rails indicting DANGER – NO BIKES would be an excellent deterrent. The cost of such installation would be estimated at \$7,920.80 This figure, \$7,920.80 is the initial cost and when averaged out, the cost per year would be approximately \$3,500.00 per year.

In my opinion the installation of the rumble strips would have prevented the condition which existed at West 19th Street in Erie, PA. When riding a bicycle myself I would always seek out a smooth area to ride. Avoiding any rough terrain and/or uneven ground was important. In my opinion any cyclist, young or older, riding along a street would completely avoid any contact with so-called rumble strips. The signage would also alert the rider to a dangerous area.

OPERATING RULES

General Rules

Safety is of the first importance in the discharge of duty.
Obedience to the rules is essential to safety.

- A. Employees whose duties are prescribed by these rules must provide themselves with a copy.
- B. Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, employees must apply to the proper authority for an explanation.

GR-9(a) Members of the crew must observe the condition of their train and inspect it at frequent intervals while it is moving. When practicable, they will look back at the track frequently to see if damaged by dragging equipment and

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also at block signals and roadway structures to see if they have been struck by protruding from their train.

GR 27. Undivided attention to duty is required. While on duty, employees must not engage in and activity that will interfere with or distract their attention from their work.

CONDUCTORS

581. Conductors have charge of trains to which they are assigned and of all employees thereon. They are responsible for safe and proper management of their trains, for protection and care of passengers and property, for performance of duty by train employees, and for observance and enforcement of all rules and instructions.

593. Conductors will occupy a window seat in the operating compartment of the controlling lead unit of moving freight trains unless otherwise instructed by a division officer.

ENGINEERS

600. Engineers are directly responsible to and must obey the orders of Division and Terminal Officers. Within shop limits they are under the direction of shop supervisors. They will obey the instructions of yardmasters and of their conductors with respect to the general management of their trains.

NORFOLK SOUTHERN SIX POINT ACTION PLAN FOR SAFETY OF OPEATIONS

STATEMENT OF POLICY SAFETY

1. All injuries can be prevented.
2. All exposures can be safeguarded.
3. Prevention of injuries and accidents is the responsibility of each employee.

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4. Training is essential for good safety performance.
5. Safety is a condition of employment.
6. Safety is good business.

OPINIONS

1. Norfolk Southern Railroad was negligent in failing to maintain the segment of railroad known as the West 19th street track in a manner to prevent accidents which were known to occur.
2. Norfolk Southern Railroad was negligent in the maintenance of the West 19th street track located within a residential and industry area.
3. Norfolk Southern Railroad was negligent in maintaining the West 19th street track in a condition which would deter children from playing along the tracks.
4. Norfolk Southern Railroad was negligent in the operation of trackage on West 19th Street in a manner that totally disregarded the presence of children who were known to play on and near the tracks.
5. Norfolk Southern Railroad was negligent in the operation of their trackage at West 19th Street by failing to display any signage to warn children of the danger of playing on or near railroad tracks.
6. Norfolk Southern Railroad was negligent in failing to recognize the danger involved in placing a track structure in the middle of a city street and failing to install signage to warn of the danger that was present.
7. Norfolk Southern Railroad was negligent in failing to recognize the danger of placing railroad tracks within a residential and industry area and failing to install a type of rumble strip and warning signage between and along both sides of the track to prevent children from riding bicycles along the edge of the track and/or next to a moving train. The rumble strips would have prevented Robin Nixon's accident.
8. Norfolk Southern Railroad was negligent in failing to properly install and maintain proper warning striping along the street surface to warn children and traffic of there being dangerous railroad track in close proximity.

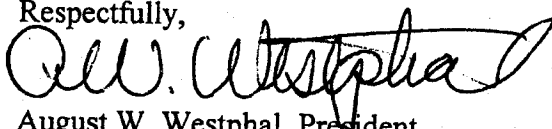
Mr. Tibor Solymosi, Esquire
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9. Norfolk Southern Railroad was negligent in failing to properly train their employees to watch and direct children away from tracks and have in place and/or initiate accepted methods and procedures to reduce or eliminate accidents which would or should have been known to occur.
10. Norfolk Southern Railroad was negligent in failing to provide a minimum amount of training for Crossing Watchmen in place to guard children in their passing over the tracks in three locations on West 19th Street.
11. Norfolk Southern was negligent in the training and application of the Operating Rules of their employees in the instant train operation.
12. Norfolk Southern was negligent in that it is clear following my review and research of the Operating Rules as above outlined, Norfolk Southern Railroad through its employees exhibited a complete disregard for a risk which was clearly known to them.
13. In my opinion the annual cost of \$3,500.00 to install and maintain rumble strips along the area of West 19th Street where the accident occurred would have been a small and reasonable expense compared to the risk presented by Norfolk Southern Railroad to children in the area.
14. It is my further opinion that the conduct of Norfolk Southern Railroad through its employees Engineer Timothy J. Price and Conductor Robert B. Glenn above referenced directly and proximately contributed to the serious injury to Robin Nixon on April 27, 1997 on the West 19th Street track at Erie, Pennsylvania.

My opinions are to a reasonable degree of railroad certainty

I reserve the right to amend this report if and when additional information and/or material facts are furnished the undersigned.

Respectfully,



August W. Westphal, President
T. O. P. of Ohio, Inc.

cc: file

Tab H
Westphal Deposition Ex. 7 - A. Westphal
Supplemental Expert Report (2/16/07)

Transit Operations & Personnel Guidance of Ohio, Inc.

P.O. Box 39146

North Ridgeville, Ohio 44039

(440) 327-7125 • FAX (440) 327-0362

e-mail: whiteywestphal1@aol.com

A. W. WESTPHAL
President

February 16, 2007

Mr. Tibor Solymosi, Esquire
SEGAL & SOLYMOSE
Attorneys at Law
818 State Street
Erie, PA 16501

Re: Robin Nixon vs. Norfolk Southern

Dear Mr. Solymosi:

This amendment is concerned with my report this date in the above captioned matter. You will recall I had reserved the right to amend my report in the event additional information or facts were presented to me.


I have now reviewed the Draft Environmental Impact Statement included with F.D. No. 33388 the "Proposed Conrail Acquisition" involving Norfolk Southern and CSX railroads. I would point to the Pedestrian Safety as follows:

The proposed increase in NS trains throughout the residential area of 19th Street and the lack of barriers to prevent public access to the tracks would affect pedestrian safety. For example, 76 residences and 30 industrial/commercial businesses between Peach and Raspberry Streets are located adjacent to the 19th Street line. In addition, eight area schools are located within 1200 feet of the main line.

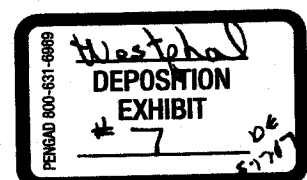
This language from the Surface Transportation Board stands out inasmuch as the trackage at West 19th Street is directly affected not only in the Merger Proposal but also in the instant accident to Robin Nixon.

Please consider this amendment as a part of my Report dated February 16, 2007

Respectfully,


August W. Westphal, President
T. O. P. of Ohio, Inc

cc: file



Member: National Association of Railroad Safety Consultants and Investigators

Tab I
Westphal Deposition Ex. 8 -
A. Westphal Typewritten Notes

ROBIN NIXON vs. Norfolk Southern Railroad

Conductor, Robert B. Glenn – Engineer, Timothy T. Price

Date of Accident April 27, 1997

First Contact March 27, 2006

T. O. P. Organized February, 1987

Sixteen Cases pending (69 RR- 49 FELA)

1988 New York Supreme Court
New York

Camacho v. CR

1994 U. S. District Court, Akron, Ohio
Ohio

Marcos v. Freightways Corp

1995 St. Louis, MO State Court
Missouri

Clark V. BN Railroad

1995 U. S. District Court, Toledo
Ohio

Springston v. Conrail

1996 St. Louis State Court
Missouri

Stubbs v. SL-SW Railroad

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*1997 Sedgwick County Court, Wichita
Kansas

Stark v. Kansas Southwestern

*1998 General Court of Justice, Superior Court
North Carolina

Simmons v. CSX Transp.

*1998 Superior Court of California, City of LA
California

Heck v. Southern Pacific RR

*2000 Cook County Court, Chicago
Illinois

Miotti v. Union Pacific Railroad

*2000 Alexandria VA Court, Alexandria, VA
Virginia

Subtle v. CSX Railroad

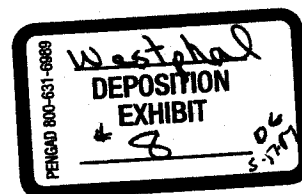
*2002 Anoka County Court, Anoka, MN
Minnesota

Bach v. Soo Line

*2005 Superior Court of California-County of LA
California

Woods v. Union Pacific RR

(*) Trial Testimony in last 10 years.



Tab J
Westphal Deposition Ex. 9
Norfolk Southern Consist for
Train Y47 62 26(4/27/97)

THIS TRAIN CONTAINS THE FOLLOWING "KEY-TRAIN" HAZARDOUS MATERIALS LOADS:

	IN TRAIN	SET-OUT/PICK-UP
* POISON INHALATION HAZARD (HZ A OR B)	0 (PIH)	
* DIVISION 1.1 OR 1.2 (EXPLOSIVES A)	0 (XA)	
* DIVISION 2.1 (FLAMMABLE GAS)	0 (FG)	
* ENVIRONMENTALLY SENSITIVE CHEMICALS	0 (ESC)	
TOTAL:	0	

L2 OUT BELLEVUE OH 00248 0345A

L2 IN CONNEAUT OH 00116 0825A

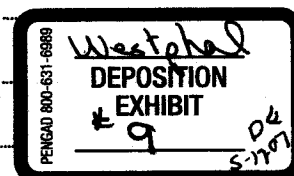
CAR HANDLING REPORT FOR TRAIN Y47-L2-26 DIRECTION: OUT PAGE 01 OF --
DEPARTED BELLEVUE OH 04/27/97 06:25 AM PRINTED 04/27/97 09:01 AM

CONDUCTOR: ON DUTY: OFF DUTY:

153 CARS = 153 LDS 000 MTYS 19,376 TONS 7,818 FEET **CARS SET OUT**

LNE INIT NUMBER CMDTY TON CLASS HAND CONSIGNE DEST/OFFJCT TIME TRACK LINE

000 NS	E08669 E	000			
000 NS	E06620 E	000			
000 NS	E08594 E	000			
001 NW	116047 BCOAL 123	BUFFSB	TONCOKE	BUFFALO	NY
002 NW	008819 BCOAL 122	BUFFSB	TONCOKE	BUFFALO	NY
003 NS	324998 BCOAL 124	BUFFSB	TONCOKE	BUFFALO	NY
004 NW	005353 BCOAL 123	BUFFSB	TONCOKE	BUFFALO	NY
005 NW	166203 BCOAL 124	BUFFSB	TONCOKE	BUFFALO	NY
006 NW	009156 BCOAL 122	BUFFSB	TONCOKE	BUFFALO	NY
007 NW	006792 BCOAL 123	BUFFSB	TONCOKE	BUFFALO	NY
008 NS	307337 BCOAL 124	BUFFSB	TONCOKE	BUFFALO	NY
009 NW	145002 BCOAL 125	BUFFSB	TONCOKE	BUFFALO	NY
010 NW	144274 BCOAL 127	BUFFSB	TONCOKE	BUFFALO	NY
011 NW	011565 BCOAL 125	BUFFSB	TONCOKE	BUFFALO	NY
012 NS	320433 BCOAL 125	BUFFSB	TONCOKE	BUFFALO	NY
013 NS	366001 BCOAL 127	BUFFSB	TONCOKE	BUFFALO	NY
014 NS	307892 BCOAL 128	BUFFSB	TONCOKE	BUFFALO	NY
015 NW	013625 BCOAL 126	BUFFSB	TONCOKE	BUFFALO	NY
016 NW	120225 BCOAL 127	BUFFSB	TONCOKE	BUFFALO	NY
017 NW	003216 BCOAL 126	BUFFSB	TONCOKE	BUFFALO	NY
018 NS	317496 BCOAL 129	BUFFSB	TONCOKE	BUFFALO	NY
019 SOU	360495 BCOAL 124	BUFFSB	TONCOKE	BUFFALO	NY



				ABCCOKE	NORTHBRIDGE	
021	SOU	340012	BCOAL 129	BUFFSB		
022	NW	012524	BCOAL 126	BUFFSB	TONCOKE	BUFFALO NY
023	NS	337088	BCOAL 127	BUFFSB	TONCOKE	BUFFALO NY
024	NS	316903	BCOAL 130	BUFFSB	TONCOKE	BUFFALO NY
025	NW	012805	BCOAL 128	BUFFSB	TONCOKE	BUFFALO NY
026	NW	003315	BCOAL 125	BUFFSB	TONCOKE	BUFFALO NY
027	NW	009635	BCOAL 126	BUFFSB	TONCOKE	BUFFALO NY
028	NW	145923	BCOAL 130	BUFFSB	TONCOKE	BUFFALO NY
029	NW	014627	BCOAL 127	BUFFSB	TONCOKE	BUFFALO NY
030	NW	145339	BCOAL 137	BUFFSB	TONCOKE	BUFFALO NY
031	NS	039063	BCOAL 135	BUFFSB	TONCOKE	BUFFALO NY
032	NS	022842	BCOAL 139	BUFFSB	TONCOKE	BUFFALO NY
033	NS	032443	BCOAL 132	BUFFSB	TONCOKE	BUFFALO NY
034	NS	028412	BCOAL 135	BUFFSB	TONCOKE	BUFFALO NY
035	NS	028672	BCOAL 135	BUFFSB	TONCOKE	BUFFALO NY
036	NW	145486	BCOAL 130	BUFFSB	TONCOKE	BUFFALO NY
037	NW	005027	BCOAL 128	BUFFSB	TONCOKE	BUFFALO NY
038	NW	003105	BCOAL 129	BUFFSB	TONCOKE	BUFFALO NY
039	SOU	360509	BCOAL 131	BUFFSB	TONCOKE	BUFFALO NY
040	NW	013913	L 130	BUFFSB	BETSTEEL	BUFFALO NY
041	NS	312579	BCOAL 123	BUFFSB	TONCOKE	BUFFALO NY
042	NW	119286	BCOAL 125	BUFFSB	TONCOKE	BUFFALO NY
043	NW	006675	BCOAL 123	BUFFSB	TONCOKE	BUFFALO NY
044	SOU	077798	BCOAL 128	BUFFSB	TONCOKE	BUFFALO NY
RESTRICTED TO EMPTY MOVE ONLY. IF LOAD CALL MECH TO INSPECT.						
045	NW	146059	BCOAL 128	BUFFSB	TONCOKE	BUFFALO NY
046	NW	009148	BCOAL 123	BUFFSB	TONCOKE	BUFFALO NY
047	SOU	360612	BCOAL 127	BUFFSB	TONCOKE	BUFFALO NY
048	NW	005483	BCOAL 127	BUFFSB	TONCOKE	BUFFALO NY
049	NW	006702	BCOAL 126	BUFFSB	TONCOKE	BUFFALO NY
050	NW	093706	BCOAL 125	BUFFSB	TONCOKE	BUFFALO NY
051	NW	119039	BCOAL 126	BUFFSB	TONCOKE	BUFFALO NY

054	SOU	360056	BCOAL	127	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
055	SOU	351588	BCOAL	133	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
056	NW	146021	BCOAL	132	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
057	NS	318701	BCOAL	129	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
058	NS	317857	BCOAL	130	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
059	NW	144621	BCOAL	130	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
060	NS	351545	BCOAL	135	BUFFSB	TONCOKE	BUFFALO	NY	-----	-----	-----
061	NS	032005	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
062	NW	005944	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
063	NW	006705	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
064	NS	305087	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
065	NW	011260	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
066	NW	146242	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
067	NW	003484	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
068	NW	117334	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
069	NW	144360	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
070	NW	013118	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
071	NW	146410	BCOAL	134	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
072	NW	093455	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
073	NW	117654	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
074	NS	317770	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
075	SOU	360976	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
076	NW	012104	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
077	NW	145878	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
078	NW	145983	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
079	NW	143049	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
080	NS	320200	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
081	NS	312684	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
082	NS	333276	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
083	NW	009492	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
084	NW	009993	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----

086 NW	001321	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
087 NS	320509	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
088 NW	144254	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
089 NW	009585	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
090 NW	116476	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
091 NW	011049	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
092 NS	304826	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
093 NW	145227	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
094 NW	004655	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
095 NW	146119	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
096 NW	010391	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
097 NS	331748	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
098 NS	337070	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
099 NW	146127	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
100 NS	310833	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
101 NS	319857	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
102 NW	010627	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
103 NW	144228	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
104 SOU	360627	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
105 NW	005770	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
106 NW	144152	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
107 NW	005576	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
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109 NW	004167	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
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111 NW	012168	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
112 NW	013266	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
113 NS	320514	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
114 NW	066124	BCOAL	111	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
115 NW	006993	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
116 NW	009839	BCOAL	122	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----
117 NW	005736	BCOAL	122	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----

120	NS	336452	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
121	NW	012019	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
122	NW	145645	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
123	NS	304233	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
124	NW	008638	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
125	SOU	360511	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
126	SOU	360750	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
127	NW	144613	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
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129	NW	006972	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
130	NW	145914	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
131	NW	117894	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
132	NS	375765	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
133	NS	307775	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
134	NW	134240	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
135	NW	144964	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
136	NS	319846	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
137	NS	320764	BCOAL	125	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
138	SOU	360528	BCOAL	124	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
139	NW	013862	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
140	NS	028424	BCOAL	129	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
141	NW	145635	BCOAL	126	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
142	NW	008848	BCOAL	123	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
143	NS	023132	BCOAL	133	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
144	NS	031847	L	129	BUFFSB	ADMIRE	LAMBERTS	VA	-----	-----	-----
145	NS	039253	BCOAL	133	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
146	NS	026642	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
147	NS	028810	BCOAL	127	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
148	NS	021396	BCOAL	134	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
149	NS	030984	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----
150	NS	026911	BCOAL	128	BUFFSB	BETSTEEL	BUFFALO	NY	-----	-----	-----

153 NS 023396 BCOAL 136 BUFFCO PDCCCBIL LAMBERTP VA

	LOADS	EMPTY'S	NET TONS	LT WT	GROSS TONS	LENGTH
TRAIN TOTALS:	153	000	14769	04607	19376	07818
AHEAD RADIO:	000	000	00000	00000	00000	00000
TOTALS DO NOT INCLUDE UNITS AND/OR CABOOSSES						

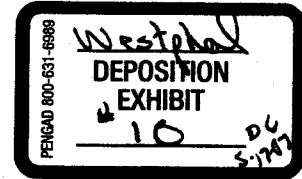
Tab K
Westphal Deposition Ex. 10 - J. Guarino
Expert Report (2/12/07)

**SOLYMO
ENTERPRISES**

10850 Hill Road
Wahington, PA 16442
(814) 825-3570

February 12, 2007

Tibor R. Solymosi, Esquire
Segel & Solymosi
818 State Street
Erie, Pennsylvania 16501



RE: Nixon v. Norfolk Southern Corp., et al.
Estimate for Striping/Rumble Strips – West 19th Street

Dear Mr. Solymosi:

You have asked me to provide you with an estimate for the costs of installing striping, warning signs and rumble strips on West 19th Street in Erie, Pennsylvania. The work would cover approximately 1.2 miles on West 19th Street from Peach Street to Raspberry Street. The purpose would be to prevent and/or discourage children from riding along the trains and grabbing onto the train in order to be pulled along the roadway.

I have compiled an estimate for the following work which includes all labor, materials and equipment:

1. Install approximately 2.4 miles of rumble strips approximately 16" to 17" long X 7" wide on 1' centers approximately .5 inches deep, the same type that you would see along shoulders on interstate highways. This would include supplying water to the rumble strip mill machine and sweeping up the milled spoils off the pavement behind the rumble strip machine. The rumble strip would have been placed parallel to the railroad tracks and approximately 72 ½ inches from the center of the track to the center of the rumble strip. Based upon my measurements of a number of rail cars, an average width of rail car is approximately 128 ½ inches. A bicycle is approximately 30 inches in width and assuming that a child would be reaching out pretty much straight forward, the center line of the rumble strip should be approximately 72 ½ inches off the center line of the track.

Cost to Install Rumble Strips . . .

\$4,970.00

2. Install a 3 ½ inch wide yellow stripe just outside of the rumble strips, along with signs between the rails indicating DANGER – NO BIKES painted in 24 inch high letters, four signs per city block, with the signs alternating so that they are legible for children traveling in both directions.

Cost to Paint Stripes and Signs . . .

\$2,950.80

• Paving and Sweeping
• Pavement Marking
• Pavement Sealing
• Snow Blowing
• Salting
• Asphalt Patching and
• Sealcoating

TOTAL COST FOR RUMBLE STRIPS, STRIPING AND SIGNS \$7,920.80

You have also asked me approximately how long the striping and rumble strips would last and provide an estimate as to how often this work would need to be done. Regarding the striping, I believe that would have to be performed on a yearly basis because of the plowing, salt wear and snow conditions.

Regarding the rumble strips, I know that the City has a constant paving renewal program going on yearly. How often blacktop paving surfaces need to be replaced is dependent on a number of factors such as the thickness of the pavement, the type of soil conditions under the pavement, drainage and traffic volume and the type of vehicles that travel on the roadway. Based upon my many years of experience in maintaining blacktop surfaces, I would estimate that the pavement on a City street could be expected to last approximately eight to ten years. I have examined the surface along West 19th Street and found it to be in excellent condition at the present time. Paved streets in the Erie area last conservatively eight to ten (8-10) years on average. Mayers Brothers Construction paved West 19th Street in 2002 after the tracks were removed. There is ample drainage and good crown to the road and good drainage and fall to the spills. The photographs you provided to me of West 19th Street when the tracks were still in place show that there was a good crown in the roadway providing good drainage away from the tracks. Based on these factors, I believe that on 19th Street in this area would last at least eight to ten years.

Taking the initial cost of milling and the yearly maintenance cost of striping, my opinion is that the present yearly cost to install the rumble strips and maintaining the striping over a nine year period would be approximately \$3,503.02 per year on average. Regarding what the costs would have been in the seventies, eighties and nineties, it is my opinion that the costs would have been less than current costs and consistent with cost of living at that time.

My opinion is based on my background, experience and training in the field of asphalt patching, preventive maintenance, repairs and safety/directional striping. It is also based upon my examination of the West 19th Street area between Raspberry Street and Peach Street. I have estimated and done this type of work for over 28 years and have based these prices upon what I charge, and what is normally charged for this type of work.

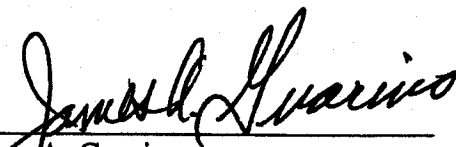
I have never authored or prepared any publications or articles within the preceding ten years nor have I ever testified as an expert at trial or by deposition within the preceding four years. You and I have agreed to an

hourly compensation for my services in this matter at the rate of \$25.00 per hour for preparation of this estimate and report. At this point in time, I have spent seven hours in order to prepare this report. I have attached to this report a drawing indicating what the rumble strips, striping and signage would look like as completed, and a copy of my estimate.

I hereby certify that the estimate and this report are in my opinion the fair market value for the work as stated.

With respect to my qualifications, please find attached hereto a Resume indicating my background, training and qualifications.

Sincerely,


James A. Guarino

RESUME

Education

Technical Memorial High School – graduate 1967
Gannon College – 1 year (1976-1977)

Specialized Training

~~28 years experience – asphalt repair, milling, sealcoating,~~
striping and power sweeping

Employment

General Electric welder – 15 years (1971-1986)
Guarino Enterprises – 28 years (1979 to present)

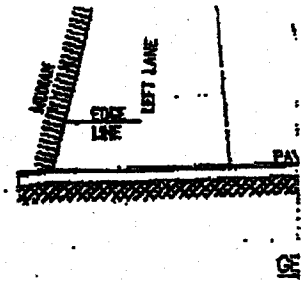
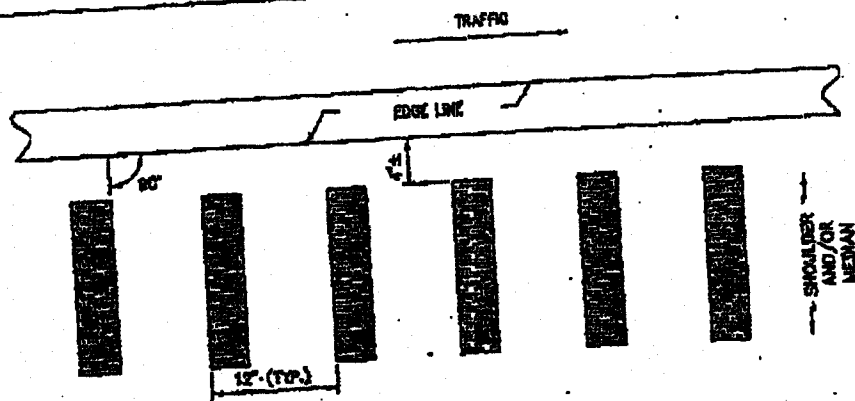
Seminars

Numerous seminars through Sealmaster (asphalt sealing,
striping, crack filling and repair)

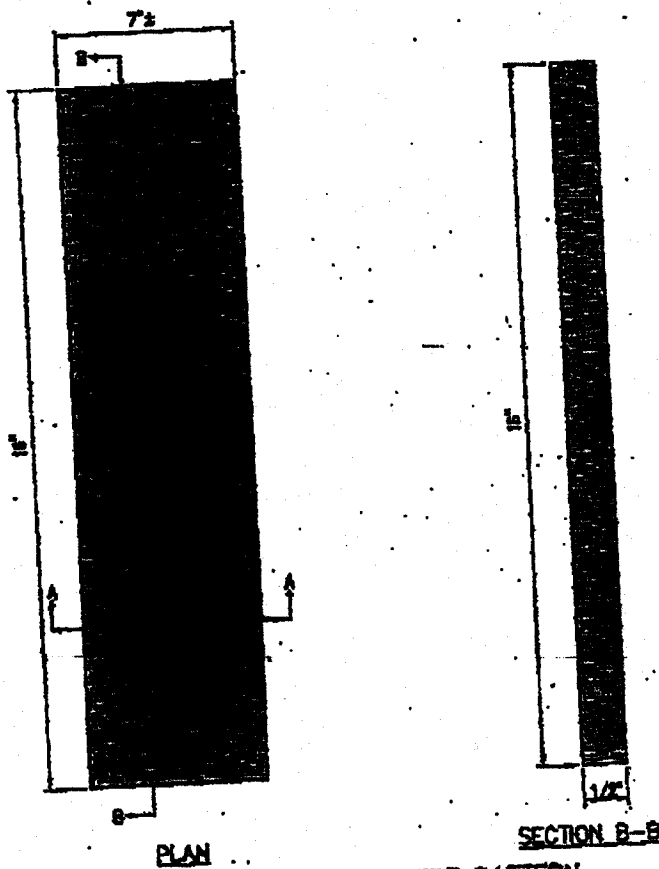
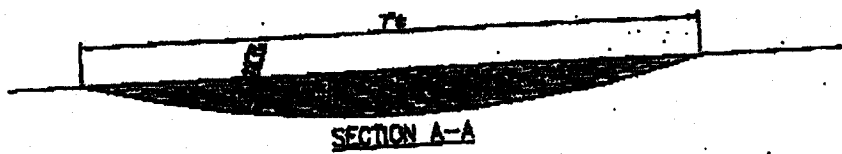
Guarino Enterprises

James A. Guarino
10859 Hill Road
Wattsburg, PA 16442
Phone (814) 825-3570
Fax (814) 825-9934

RUMBLE STRIP DIAGRAM

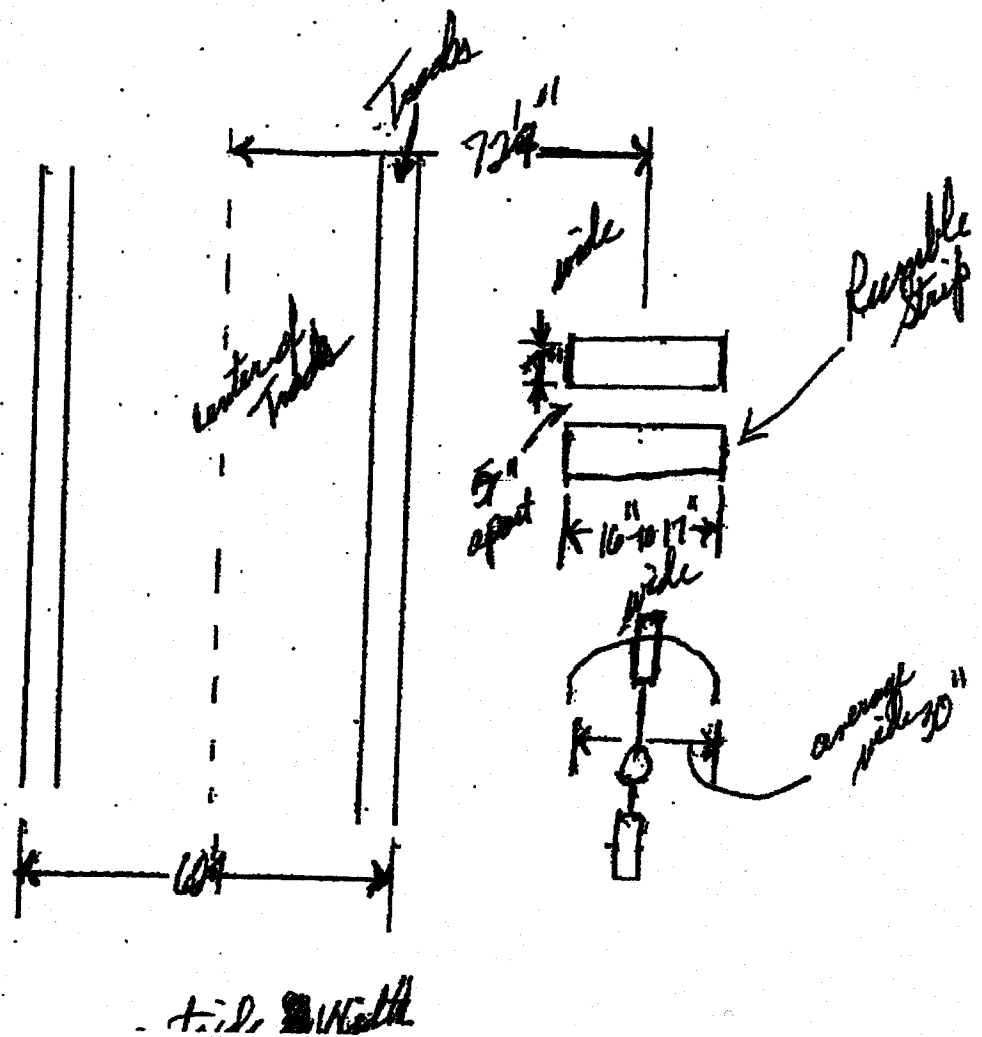
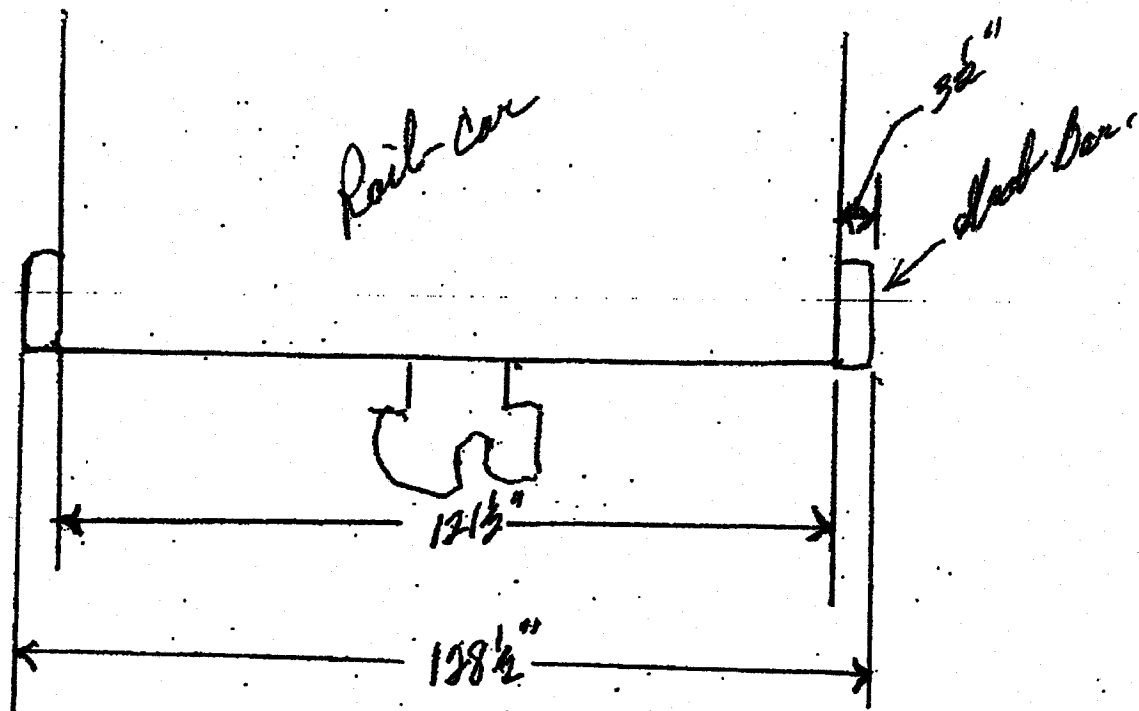


LOCATION DETAIL OF SONIC NAP ALERT PATTERN SEE NOTE 4



DETAILS OF SONIC NAP ALERT PATTERN

LEGEND:
 (SRPM) SNOWPLOW
 SNAP (SONIC NAP)



ESTIMATE FOR STRIPING AND RUMBLE STRIPS FOR WEST 19TH STREET

MILLING AND CLEANUP:

Milling 2.4 miles of milled rumble strips:	\$3,600.00
Water truck on site:	\$ 550.00
Two Tri-axle trucks - 2 hours	\$ 260.00
One Athey broom sweeper - 3 hours (cleanup & hauling)	\$ 260.00
Traffic Control- 4 flagmen to direct traffic-3 hours to end of job	\$ 300.00
TOTAL (LABOR, EQUIPMENT AND HAULING)	\$4,970.00

STRIPING:

Layout line at 3 ½" wide in solid line on both outer sides of Rumble strip. Sherwin Williams Highway Traffic yellow Paint (12,672 linear feet x .15 cents /foot)	\$1,900.80
Layout DANGER NO BIKES-24" letters between tracks at 4 per block spacing	
42 Stencils in Traffic Yellow paint	\$1,050.00
TOTAL STRIPING	\$2,950.80
 TOTAL COST	 \$7,920.80

AVERAGE COST OVER NINE YEARS

Year One - Milling and Striping	\$ 7,920.80
Years Two through Nine - Striping Only	
Eight Times \$2,950.80	<u>\$23,606.40</u>
TOTAL COST	\$31,527.20
 Divided by Nine years Equals a per year average of:	 \$ 3,503.02



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MAPQUEST

START W 19th St & Peach St
Erie, PA 16502, US

END W 19th St & Raspberry St
Erie, PA 16502, US

Total Est. Time:
4 minutes

Total Est. Distance:
1.25 miles

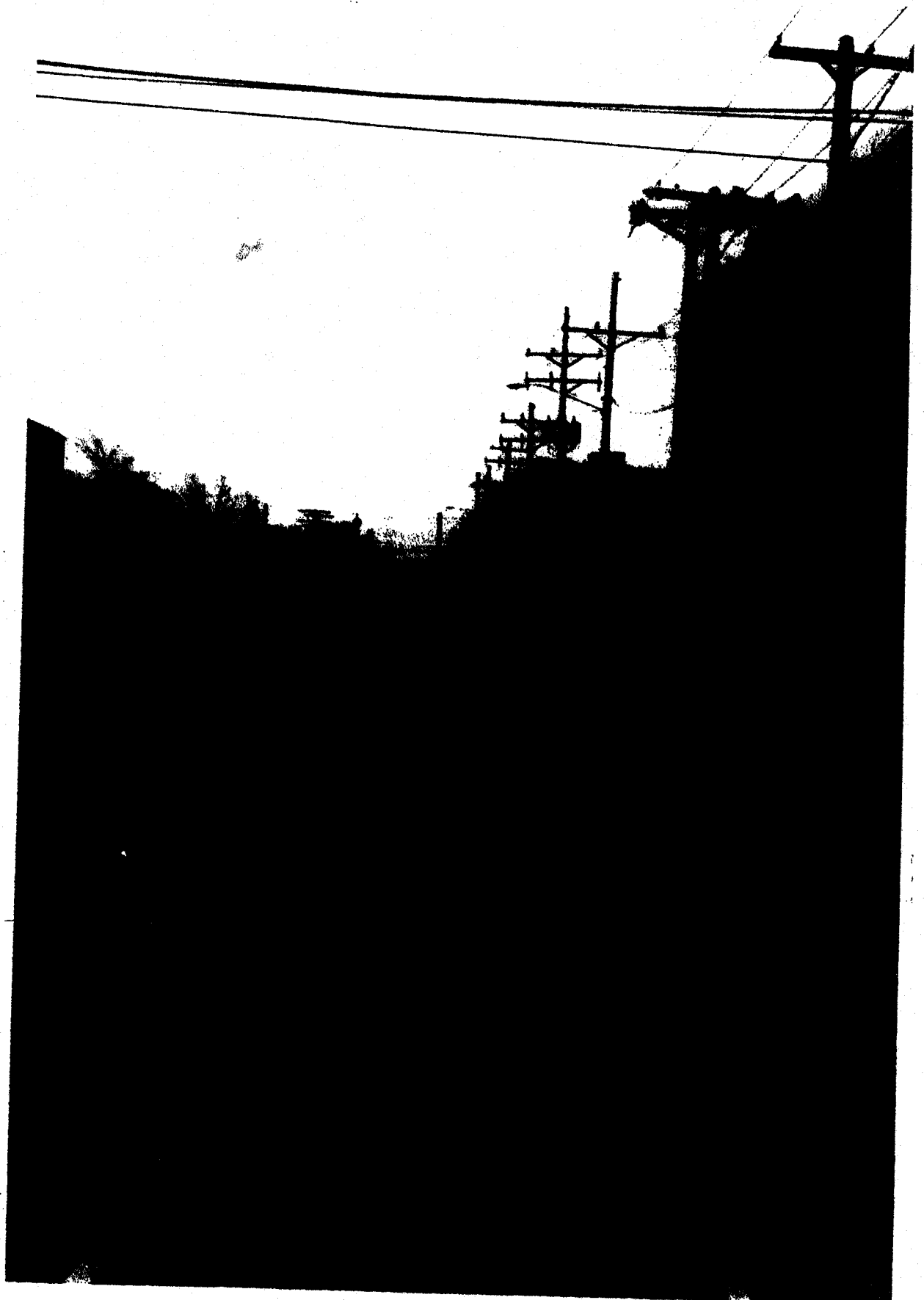
Maneuvers

Distance

START	1: Start out going SOUTHWEST on W 19TH ST toward SASSAFRAS ST.	1.2 miles
END	2: End at W 19th St & Raspberry St Erie, PA 16502, US	

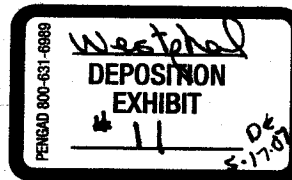
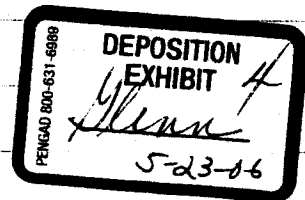
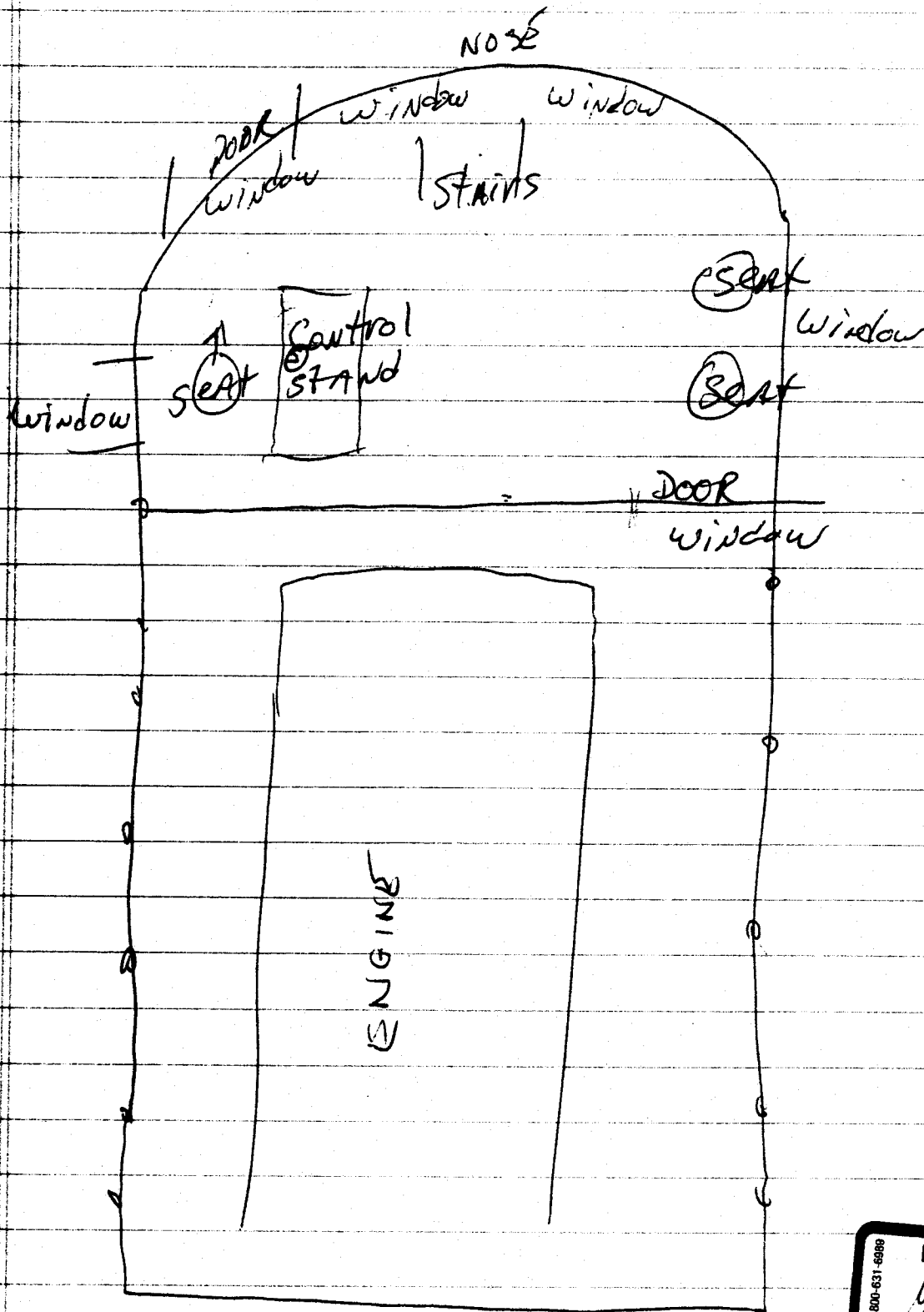
Total Est. Time: 4 minutes

Total Est. Distance: 1.25 miles



Tab L

**Westphal Deposition Ex. 11 - R. Glenn
Drawing of Norfolk Southern Locomotive
(Glenn Deposition Ex. 4)**



CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2007, the foregoing Appendix to Defendants' Motion to Bar August W. Westphal as Expert Witness and to Exclude Westphal's Testimony and Other Evidence in Opposition to Defendants' Motion for Summary Judgment was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Roger H. Taft
Roger H. Taft, Esq.